

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
MARK DONOVAN	:	BOARD OF APPEALS
	:	HEARING EXAMINER
Petitioner	:	BA Case No. 08-047V

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DECISION AND ORDER

On November 3, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Mark Donovan for a variance to reduce the 7.5-foot side setback feet to 2 feet for an attached garage filed pursuant to Section 108.D.4.c(1)(b) of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Mark Donovan testified on his own behalf. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 6129 Syracuse Court is located in the 5th Election District. It is identified on Tax Map 37, Grid 12, as Parcel 37, Lot 2 (the "Property"). It is located on the north side of Guilford Road approximately 300 feet southeast of MD 108.

2. The Property is a rectangular-shaped, 14,864 square foot lot located in an R-12 (Residential: Single) zoning district. The variance plan does not depict property line dimensions. However, based on the variance plan, the northern side lot line appears to be about 135 feet long and the eastern lot line, about 78 feet deep. A small section of the front lot line is curved.

3. The Property is improved by a single-family brick and frame dwelling. The southernmost frame section is one-story in height, the western brick section, two stories. A small porch off the two-story section faces Guilford Avenue. There is a frame deck on the eastern side. The dwelling is accessed from a paved driveway running along side the dwelling's Guilford Avenue side.

4. Adjacent properties are also zoned R-12. To the north and east are several R-12 lots improved with single-family dwellings. To the west is an Open Space Lot and beyond this, a B-2 zoned shopping center. To the south, across Guilford Road is a RR-DEO zoned farm.

5. The Petitioner, the Property owner, requests a variance to construct a 32' wide by 24' deep garage 2 feet from the northern property line adjoining the Open Space Lot. The proposed garage would thus encroach 5.5 feet into the 7.5 side setback.

6. Mark Donovan testified the garage would be attached to the house via a breezeway (an extension of the porch) and that the lot was one of the smallest in the neighborhood. The garage's location within the setback is intended to avoid blocking the view from a window. He also stated the house was constructed in 1948 and that all the neighborhood properties had large garages. He wanted the garage to work on an old car.

7. In response to questioning about the absence of any information concerning the appearance or height of the structure, Mark Donovan stated it would be brick, with siding to match the dwelling, not a large metal shed-like structure. The dwelling originally had an address of 6129 Guilford Road, but was given the new address when a previous owner subdivided the property into four pipestem lots. It was his view that the front of the house had switched from Guilford toward Syracuse Court. Consequently, the garage would be located to the rear and side of the dwelling.

8. In response my to my stated concerns about the proximity of the garage to the Open Space Lot, he agreed to landscape the area between the Open Space Lot and the garage.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property appears to be one the smallest in the neighborhoods. Consequently, I find that smallness of the lot causes the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The attached garage will be used for a permitted purpose and will not change the nature or intensity of use. Although the Petitioner agreed to landscape the area behind the garage to buffer the Open Space Lot, my review of the landscape manual indicates that the width is too small. The appropriate buffer is a fence that complies with Section 128 of the Zoning Regulations. Subject to the condition that the Petitioner install a lawful fence

along the side lot running alongside the garage, the variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the size of the lot and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed attached garage will be brick and siding, in the same style and color as the house and is similar in overall size to area garages. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

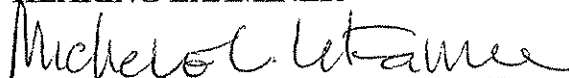
Based upon the foregoing, it is this 24th day of November 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Mark Donovan for a variance to reduce the required 7.5-foot setback to 2 feet for an attached garage is **GRANTED**.

Provided, however, that:

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall continue the covered porch/breezeway to connect it physically to the garage.
3. The garage's façade shall be brick and siding to match or complement the dwelling.
4. The Petitioner shall install a fence near or on the property line behind the garage, which shall run from the side of the house to the building restriction line for Guilford Road. The fence shall comply with Section 128.A.9 of the Howard County Zoning Regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed:

11/26/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.